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FEDERAL ELECTION COMMISSION

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Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

RAD REFERRAL 14L-14R

DATE RECEIVED: September 30, 2014

DATE NOTIFICATION: October 15, 2014

DATE OF LAST RESPONSE: None

DATE ACTIVATED: January 8, 2015

EARLIEST SOL: December 6, 2017

LATEST SOL: July 9, 2018

ELECTION CYCLE: 2012

SOURCE: Internally Generated

RESPONDENT: Afghanistan and Iraq Veterans for Congress PAC
Scott B. Mackenzie in his official capacity
as treasurer¹

RELEVANT STATUTES: 52 U.S.C. § 30104(a)-(b)²
11 C.F.R. § 104.1(a)
11 C.F.R. § 104.3(a)-(b)
11 C.F.R. § 111.43(a), (d), (e)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Commission's Alternative Dispute Resolution Office ("ADRO") referred Afghanistan and Iraq Veterans for Congress PAC and Scott B. Mackenzie in his official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose receipts totaling \$109,566.25 and disbursements totaling \$132,979.21 on its original 2012

¹ Christopher Covucci was the treasurer of record at the time of the activity at issue in this matter. See Statement of Organization (Feb. 6, 2014); <http://docquery.fec.gov/pdf/930/14031181930/14031181930.pdf>.

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 30-Day Post-General Report. *See* Memorandum from Lynn Fraser, Director, ADRO, FEC, to
2 Gregory R. Baker, Deputy General Counsel-Administration, OGC, FEC (Sept. 30, 2014)
3 ("Referral"), incorporated herein by reference.

4 Based on the available information, we recommend that the Commission open a matter
5 under review ("MUR") and find reason to believe that the Committee violated 52 U.S.C.
6 § 30104(b) (formerly 2 U.S.C. § 434(b)) by failing to accurately disclose receipts and
7 disbursements. Additionally, we recommend that the Commission enter into pre-probable cause
8 conciliation with the Committee

9 II. FACTS

10 The Committee is a multicandidate political committee registered with the Commission.
11 *See* Statement of Organization (Apr. 5, 2014). On December 6, 2012, the Committee timely
12 filed its 30-Day Post-General Report covering the period from October 18, 2012, through
13 November 26, 2012. The report disclosed no receipts and total disbursements of \$25,000.00.
14 *See* Committee 2012 30-Day Post-General Report (Dec. 6, 2012).³ On July 9, 2013, the
15 Committee filed an Amended 2012 30-Day Post-General Report that disclosed an additional
16 \$109,566.25 in receipts and \$132,979.21 in disbursements. *See* Committee 2012 Amended 30-
17 Day Post-General Report (July 9, 2013).⁴

18 On October 29, 2013, the Reports Analysis Division ("RAD") sent the Committee a
19 Request for Additional Information ("RAFI") regarding the additional receipts and

³ <http://docquery.fec.gov/pdf/356/12962896356/12962896356.pdf>.

⁴ <http://docquery.fec.gov/pdf/658/13964009658/13964009658.pdf>.

1 disbursements disclosed on the Amended 2012 30-Day Post-General Report.⁵ See Referral at 6.

2 In a follow-up telephone call on November 18, 2013, a RAD Analyst spoke with a Committee

3 representative who handled the Committee's filings about the RFAI. See Referral, Attach. 3.

4 During the conversation, the Analyst told the representative that the increased activity could be

5 referred to the Commission for further action. *Id.* The Committee did not respond to the RFAI.

6 RAD referred the Committee to ADRO for failing to disclose receipts totaling

7 \$109,566.25 and disbursements totaling \$132,979.21 on its original 2012 30-Day Post-General

8 Report.⁶ See Memorandum from Deborah Chacona, Asst. Staff Director, RAD, FEC, to Lynn

9 Fraser, Director, ADRO, FEC (May 15, 2014). The Committee did not respond to ADRO's offer

10 to participate in the ADR process, and ADRO referred the matter to OGC pursuant to the

11 Commission's procedures to refer a matter to OGC when a committee elects not to participate in

12 the ADR process.⁷ See Referral at 1.

⁵ RAD originally sent the RFAI to the Committee on September 19, 2013, but the RFAI was removed from the public record due to the October 2013 government shutdown. RAD resent the RFAI to the Committee on October 29, 2013. The revised response date was December 3, 2013.

⁶ RAD referred this matter to ADRO pursuant to the "per report" ADRO threshold set forth in Standard 7 of *Reports Analysis Division Review and Referral Procedures for Unauthorized and Authorized Committees for 2011-2012 Election Cycle* at 74 (the "Referral Procedures") (approved by Comm'n Apr. 5, 2011). Referral at 4, n.1. Standard 7 of those procedures states that a case will be referred to ADRO when (i) an amendment or amendments are filed at least [redacted] business days after the original report was filed (or after the report due date, whichever is latest); (ii) the amendment or amendments disclose an increase or decrease of more than [redacted] in receipts, disbursements, or debts; and (iii) for an election-sensitive report, the increase or decrease is in excess of [redacted] and less than or equal to [redacted], or for a non-election-sensitive report, the increase or decrease is in excess of [redacted] and less than or equal to [redacted]. In this matter, the increased activity was \$109,566.25 in receipts and \$132,979.21 in disbursements, an increase of over [redacted] in both receipts and disbursements, and occurred on a non-election-sensitive report. See 11 C.F.R. § 111.43(d)(1) (election-sensitive reports do not include the 30-Day Post-General Report).

⁷ While this matter does not meet RAD's thresholds for initial referral to OGC, see Referral Procedures at 75 (requiring increased activity in excess of [redacted] on a non-election-sensitive report), ADRO's introductory letter to the Committee states in bold print: "[f]ailure to respond affirmatively within fifteen (15) business days of receipt of this letter will be taken as a notice of disinterest in the program and your case will be dropped from further consideration for ADR," and then states "[i]n that event, your case will be sent to the FEC's Office of General Counsel for further processing." Letter from Lynn Fraser, Director, ADRO, FEC, to Scott B. MacKenzie, Treasurer of the Committee at 2 (May 23, 2014). See also *Guidebook for Complainants and Respondents on the FEC Enforcement Process* at 23 (May 2012).

OGC notified the Committee of the Referral, but the Committee did not respond.⁹

III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act") requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104 (formerly 2 U.S.C. § 434). *See* 52 U.S.C. § 30104(a)(1) (formerly 2 U.S.C. § 434(a)(1)); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements, including the appropriate itemizations, where required. *See* 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)); 11 C.F.R. § 104.3(a)-(b).

Here, the Committee did not comply with the Act's reporting requirements when it failed to disclose receipts totaling \$109,566.25 and disbursements totaling \$132,979.21 on its original 2012 30-Day Post-General Report. We therefore recommend that the Commission open a MUR and find reason to believe that the Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)). *See* Certification, MUR 6759 (California Real Estate PAC) (Oct. 22, 2013) (Commission found reason to believe regarding committee ADRO referred to OGC for increased activity).

⁹ The Committee appears to be inactive. Its most recent disclosure report shows no receipts, disbursements, or debts. *See* Committee 2014 Year-End Report (Jan. 3, 2015); <http://docquery.fec.gov/pdf/447/15950001447/15950001447.pdf>. The Committee previously requested to terminate. *See* Committee Termination Report (Apr. 5, 2014); <http://docquery.fec.gov/pdf/7040/14960608040/14960608040.pdf>. RAD informed the Committee that its request to terminate will remain pending with the Commission during its review of the increased activity. RFAI Re: Termination Report received April 5, 2014 (May 9, 2014); <http://docquery.fec.gov/pdf/782/14330051782/14330051782.pdf>.

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4 **V. RECOMMENDATIONS**

5 1. Open a MUR.

6 2. Find reason to believe that Afghanistan and Iraq Veterans for Congress PAC and
7 Scott B. Mackenzie in his official capacity as treasurer violated 52 U.S.C.
8 § 30104(b) (formerly 2 U.S.C. § 434(b)).
9

10 3. Approve the attached Factual and Legal Analysis.

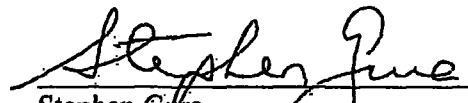
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12 4. Enter into conciliation with Afghanistan and Iraq Veterans for Congress PAC and
13 Scott B. Mackenzie in his official capacity as treasurer prior to a finding of
14 probable cause to believe.
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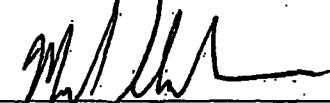
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6. Approve the appropriate letter.

3.4.15
Date

Daniel A. Petalas
Associate General Counsel

BY: 
Stephen Gura
Deputy Associate General Counsel


Mark Shonkwiler
Assistant General Counsel


Kamau Philbert
Staff Attorney